

Sixth Meeting of the Children & Young People Working Group
Children's Law Centre
Friday 19th October 2007 , 9-1pm

Members Present: Sorcha McKenna, Children's Law Centre/Save the Children – Chair
Jenny Palmer, DUP
Roy Beggs MLA, UUP
Mathew McDermott, SDLP
Anna Lo MLA, Alliance
Paddy Kelly, Children's Law Centre
Bronagh Byrne, Disability Action
Liam Larmour, Rainbow Project
Pip Jaffa, Parents Advice Centre

Apologies: Lindsay Conway, Irish Council of Churches
Sue Ramsay MLA, Sinn Fein

HR Advisor : Linda Moore

Observers : Caroline Cunningham, CAJ

Issue of Comments made in the N.I. Assembly on Monday 16th October 2007

Before the set agenda was addressed Paddy Kelly spoke in respect of the Assembly debate on the Bill of Rights refuting the slander, comments and misleading statements made in respect of her and CLC staff, management and founding members of the Children's Law Centre.. She detailed the services of the Centre and how these were provided without discrimination. She indicated that letters would be sent to the relevant MLAs. A letter from Sheri Chamberlain was read to the Working Groups and Pip Jaffa recorded her support for CLC, Save the Children, their staff and Paddy Kelly and Sheri Chamberlain specifically.

Update on Forum/Working Groups

Sorcha Mc Kenna updated the Working Group on the following :

- Linda Moore is the new human rights advisor.
- Funding of up to £1000 has been agreed to fund necessary administration costs, for example, the provision of a note taker, refreshments, venue hire.
- Forum residential in Derry/Londonderry was a success. Gareth Wright to circulate copies of expert presentations to WG members.
- Sorcha has spoken to human rights advisor of the Social and Economic Working Group and put forward concerns of this Working Group.
- At this point Roy Beggs MLA indicated that he felt that there will be disagreement over much of the socio economic rights.
- Outreach : Secretariat will be advertising four part-time posts in the hope that they will achieve a larger response to this round of recruitment. Forum members asked to actively encourage applications.
- Forum agreed on the establishment of an outreach subgroup to help the outreach workers hit the ground running. The group is to consist of one member of each WG plus Gillian Preece as convenor.
- Sorcha advised the WG that as she will be co-ordinating the children's sector outreach that she would be willing to sit on the Outreach group but invited alternative nominations. No nominations were forthcoming and there were no objections to Sorcha as the Children's WG rep on the outreach subgroup.

Education

There were discussions based on the following suggested text:

Suggested text

1. Every child has the right to education.

2. The State shall ensure that the education is inclusive and respects the rights and best interests of all children including children with disabilities, children with special education needs, children in care, children in detention, children of ethnic minorities and Traveller children. To this end, the State shall take all necessary measures to combat all forms of discrimination in the school system and shall ensure that all children have the right to access the curriculum, as well as to receive an education which is aimed at the fulfillment of their potential and realisation of their talents. The State shall promote and encourage the development of different forms of education, including integrated and Irish medium schools, and shall make schools accessible to every child.
3. The State shall ensure that school exclusions are only imposed as a measure of last resort bearing in mind the fundamental nature of the right to education and the negative impact which an exclusion can have on a young person's future. Children excluded from school have the right to be informed promptly of the grounds for their exclusion and have the right to participate in any appeal procedure, together with their parents or other representatives.
4. The State undertakes to adopt all necessary measures to protect the safety of pupils in school, to respect their privacy and to guarantee their participation at all levels.
5. Children have the right to receive information and guidance in a timely and accessible manner on careers and matters of health, sex and sexuality.

Points of Discussion

There was a lengthy discussion on the proposed wording of the clause.

Roy Beggs MLA wanted it recorded in the minutes that he had voiced concern that the move beyond what he viewed as rights specific to Northern Ireland to rights of general application was beyond this Working Group's and the Bill of Rights' remit, and that the task in hand had as its starting point the Good Friday / Belfast Agreement 1998.

Other members clarified that the role of the Working Group was to decide what recommendations should be made to the Forum which will ultimately decide what to include. Therefore, recommendations must reflect the wide and varied nature of issues that may adversely affect or impact on children with regard to the situations particular to Northern Ireland.

Some concerns were voiced that specific groups were mentioned in the proposed clauses, with strong concerns voiced by Jenny Palmer and Roy Beggs MLA. re the fiscal implications of the proposals and the ambiguity of stating that the rights concerned are to apply to all children and then listing groups. It was explained by the Chair and Human Rights Advisor that the listing of particularly vulnerable groups is standard practice and that a 'catchall' should be added to ensure the document is a living instrument relevant to changing social circumstances.

There was general consensus that using the word school misrepresents the age range of those to whom the provisions will apply and that they will also apply to all those under 18 years of age attending college or other institutions providing education.

Roy Beggs MLA expressed concern about the fiscal implications of using the term educational institutions rather than schools.

It was agreed that the quality of opportunity and access to institutions for all children was the paramount consideration.

There was also a suggestion originating from Mathew McDermott that children should be informed of their rights surrounding the process of expulsion as well as certain remedies that they may seek and how.

Linda Moore voiced concern that the expulsion clause doesn't go far enough and suggested cross-referencing it with paragraph 1 as children excluded may have undiagnosed problems. Pip Jaffa agrees that something needs to be added with Linda adding that all other avenues should be exhausted. Paddy Kelly feels that the latter must be done bearing in mind the fundamental nature of and impact that the denial of a child's right to education has.

Liam Larmour felt that the privacy of children on certain issues should be protected. It was also suggested that the children's right to participate and voice their view on issues affecting them should be protected.

Agreed Wording

1. Every child has the right to education.
2. The State shall ensure that the education is inclusive and respects the rights and best interests of all children without discrimination including children with disabilities, children with special education needs, children in care, children in detention, child carers, children of differing sexual orientation, children of ethnic minorities, Traveller children and children living in poverty or other status. To this end, the State shall take all necessary measures to combat all forms of discrimination in education and shall ensure that all children have the right to ***full access** to the curriculum, as well as to receive an education which is aimed at the fulfillment of their potential and realisation of their talents. The State shall promote and encourage the development of different forms of education, and ensure equality of opportunity and access to educational institutions for all children.
3. The State shall ensure that school exclusions are only imposed as a measure of last resort and for the shortest period of time, and only after consideration of all alternatives bearing in mind the fundamental nature of the right to education. Children excluded from school have the right to be informed promptly of the grounds for their exclusion and of their right to participate and have the right to fully participate in any appeal procedure, together with their parents and/or other representatives. The child retains their right to education during exclusion and should be encouraged by the educational institution to return as soon as possible.
4. The State undertakes to adopt all necessary measures to protect the child's right to education and the safety and well being of pupils in the educational environment, to respect their privacy and their right to participate.

5. Children have the right to seek, receive and impart information and guidance in a timely and accessible manner on issues affecting their social, spiritual and moral well-being and physical and mental health.

*WG to return to the issue of full access at next meeting

Economic Exploitation

There was a discussions based on the following suggested text:

Suggested text

1. The State recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. In all such considerations the best interests of the child should be the paramount consideration.

2. The State shall without discrimination take all necessary legislative, administrative, social and educational measures to ensure the implementation of the present article including guaranteeing the child's right to advocacy. To this end, and having regard to the relevant provisions of other international instruments, the State shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Points of Discussion

Sorcha and Paddy identified this as an area where current provisions in Northern Ireland were lacking as well as being a gap in the ECHR .

Arguments put forward against including this provision were that there is already sufficient legislation which should be adequate; and if these provisions aren't working is a Bill of Rights necessarily the right way forward for this issue? The relationship between a Bill of Rights and other legislation was discussed specifically that a Bill of Rights would not negate the need for detailed legislation but rather act as a benchmark against which such legislation would be subject to scrutiny.

Those in favour of including a provision on economic exploitation felt that this was an opportunity to address current concerns and set the benchmark for future legislation and policy .

Agreed Wording

1. The State recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to interfere with the child's education, or to be harmful or hazardous to the child's health or physical, mental, spiritual, moral or social development. In all such considerations the best interests of the child should be paramount.

2. The State shall without discrimination take all necessary legislative, administrative, social and educational measures to ensure the implementation of the present provision including guaranteeing the child's right to advocacy. To this end, and having regard to the relevant provisions of international instruments, the State shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present provision .

Sexual Exploitation

Discussions were based on the following suggested text:

Suggested text

1. Every child has the right to be protected from all forms of violence, abuse, maltreatment, neglect and exploitation including sexual abuse, child prostitution, trafficking and involvement in pornography.
2. The State shall take all appropriate legislative, administrative, social and educational measures to protect every child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including, but not limited to, such acts or omissions while in the care of the parent(s), legal guardian or any other person who has the care of the child.
3. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment and, as appropriate, for judicial involvement.

Points of Discussion

Sorcha explained that sexual exploitation was not addressed by the ECHR and was an issue of growing concern in Northern Ireland partially as a result of the rising immigrant population and the increase of child trafficking. Having reviewed the international standards and research in this area she feels that sexual exploitation can be incorporated into a general protective provision incorporating all forms of violence, abuse and exploitation.

Roy Beggs MLA raised the question of why a provision in the Bill of Rights was necessary when the UK has some of the strongest sexual offence legislation in the world. He was of

the belief that any such provision would be superfluous to a bill of rights given the strength of current legislation in this area. He also questioned the appropriateness of dealing with what was ultimately a criminal justice matter given criminal justice has not yet been devolved to the Northern Ireland Assembly. He also questioned the point of a Bill of Rights provision if current legislation was failing. Sorcha explained that sexual exploitation was not merely a criminal justice matter but was also a social matter with countless ramifications to the health, security and well being of children in NI. The Bill of Rights was not seeking to undermine existing legislation rather to ensure that legislation continues to protect children from all forms of violence and exploitation. New forms of exploitation are emerging and evolving thus necessitating the inclusion of a strong protection clause to ensure the safety and best interests of children in Northern Ireland.

Agreed Wording

1. Every child has the right to be protected from all forms of violence, abuse, maltreatment, neglect and exploitation including sexual abuse, child prostitution, trafficking and involvement in pornography.
 2. The State shall act in the best interests of the child in taking all appropriate legislative, administrative, social and educational measures to protect every child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including, but not limited to, such acts or omissions while in the care of the parent(s), legal guardian or any other person who has the care of the child.
 3. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment and, as appropriate, for judicial involvement.
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Migrant Workers and Refugees

Anna Lo MLA stated that in her opinion analysis in respect of migrant workers and refugees who are children needed to start with the fact that UK government hasn't yet signed-up to the International Convention on the Protection of Refugees and Migrant Workers.

It was agreed that Linda Moore should investigate this issue further with a view to reporting back to the WG at the next meeting when a decision would be taken on the need to include a stand alone provision on migrant workers etc or to ensure non-discrimination through the recommendations .

Health

Discussions were based on the following suggested text:

Suggested text

1. Every child and young person has the right to enjoy the highest attainable standard of health and shall enjoy the right to access all appropriate healthcare services including but not limited to oral health and child and adolescent mental health services.
2. The State shall take all appropriate measures to guarantee the right to health and social care specific to children including disabled children, those with special educational or mental health needs, children from ethnic minorities and those living in a position of social deprivation.
3. The State shall take all appropriate measures to ensure the child's right to preventative education and early intervention measures to address such social problems as child abuse, drug and alcohol misuse, mental health issues, sexual and reproductive health problems and teenage pregnancy.

Points of Discussion

Concern was raised again in respect of the fiscal implications of providing for particular rights. It was specifically noted that the use of the word guarantee suggested a right which may not be deliverable by virtue of fiscal consideration. It was felt that despite its wide use in other similar documents, the word guarantee should not be used as it embodies an expectation which cannot be fulfilled if it relies on the capacity of the state to fulfil such obligations. Concern was also expressed that limited resources would end up being spent enriching lawyers.

An in depth discussion took place around the separation of powers and the fact that the working group was not trying to dictate how the government should allocate funds rather it was attempting to highlight areas of particular concern within Northern Ireland and set the benchmark against which legislation and policy should be constructed. It was stated that in the context of rights contained in a Bill of Rights it was then for the Executive to determine government decisions and fiscal spend, for the Assembly to legislate in compliance with the Bill of Rights and for the Judiciary to adjudicate when there was a dispute re these rights. This it was said was the foundation of democracy and the separation of powers.

With particular reference to clause 2.3 it has been raised that the education aspect relating to health needs to be appropriate to the age of the child.

There was a discussion re the role of parents and how that might be reflected in the provisions in addition to the need to support parents and in some occasions intervene in the best interests of the child. It was agreed that a further discussion would be had at the next meeting around the inclusion of a family provision or a preambular reference to the critical role of the family.

Agreed Wording

1. Every child and young person has the right to enjoy the highest attainable standard of health without discrimination and shall enjoy the right to access all appropriate healthcare services including but not limited to child and adolescent mental health services and oral health.

2. The State shall take all appropriate measures to protect the right to health and social care specific to all children without discrimination including children with disabilities, those with special educational or mental health needs, children from ethnic minorities and those living in a position of social deprivation.
 3. The State shall take all appropriate measures to ensure the child's right to preventative, age appropriate education and early intervention measures to address such social problems as child abuse, drug and alcohol misuse, mental health issues, sexual and reproductive health problems and teenage pregnancy.
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Action Points

- Roy Beggs MLA noted that in the final report of the Working Group to the Forum he wished to have recorded his concerns that in including rights beyond what he believes to be the particular circumstances of Northern Ireland the working group were acting inappropriately and had gone beyond the remit under the Good Friday Agreement and consequently the proposals will not receive cross community support.
- Linda Moore will investigate the legal ramifications of including the term 'full access' under education. This will then be discussed at the next meeting.
- Linda Moore will assess the status of International Convention on the Protection of Refugees and Migrant Workers and co-ordinate with other working groups on their approach to this issue.
- Sorcha McKenna will liaise with the Implementation Working Groups Advisor on the inclusion of the term 'State' with regard to human rights compliance.

- Linda Moore and Sorcha McKenna will consider the possibility of including a clause reflecting the special role of parents based on the role of parents in protecting the rights of children depending on their age and maturity .
- Sorcha McKenna will advise the Secretariat of her nomination to the outreach subgroup.
- Sorcha McKenna will circulate the recent OFMDFM report .

Dates for next Meetings

9am – 1pm	9 th Nov	Children’s Law Centre , Philip House
10am-4pm	16 th Nov	Venue to be confirmed.
2pm-5pm	28 th Nov	Children’s Law Centre, Philip House